IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

Crl.MC.No. 304 of 2006(C)

S.T.NO.1114/2005 OF J.F.C.M-I, THRISSUR

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PETITIONER: ACCUSED.

A.C.CHUMMAR, AKKARA HOUSE,
OLLUR P.O. THRISSUR DISTRICT.

BY ADV. SRI.C.S.MANU

RESPONDENTS: COMPLAINANT AND STATE.

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1. FEDERAL BANK LTD., ALWAYE REPRESENTED BY THE SENIOR MANAGER, ST.NAGAR BRANCH, THRISSUR.

2. THE STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.MOHAN JACOB GEORGE
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.304 of 2006

Dated this the 15th day of January, 2007

ORDER

The petitioner is the accused in a prosecution under Section 138 of the N.I Act. The respondent/complainant had filed a private complaint and cognizance was taken on such complaint. The petitioner has come to this Court with a prayer that proceedings against the petitioner may be quashed invoking the powers under Section 482 Cr.P.C.

2. What is the reason ? The short contention raised by the petitioner is that the complainant is not the payee or the holder in due course. In these circumstances, the prosecution initiated at the instance of the respondent/complainant is not justified and deserves to be quashed. This in short is the plea.

3. The copy of the cheque in question has been produced before the court. It shows that the payee is the Federal Bank. But the amount is directed to be received in the temporary over draft account of M/s.Akkara Car Company. The name of the Federal Bank, the complainant appears as the payee though there is a direction that the amount is to be granted to the temporary over draft account of M/s.Akkara Car Company. The relevant direction in the cheque is to pay the amount to “TOD A/c Akkara Car Company Federal Bank”.

3. I shall scrupulously avoid any detailed discussion or expression of opinion on the disputed questions of fact. Suffice it to say that at the moment and with the available inputs, I find absolutely no merit or substance in the contention that the prosecution has been launched by a person who is neither the payee nor the holder in due course.

4. This Crl.M.C is, in these circumstances, dismissed. I may hasten to observe that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to raise all appropriate and necessary contentions before the learned Magistrate. I have only taken the view that proceedings do not deserve to be prematurely terminated by invoking the powers under Section 482 Cr.P.C.

(R.BASANT, JUDGE)

rtr/-